

SOUTH CAROLINA PUBLIC SERVICE COMMISSION

STANDING HEARING OFFICER DIRECTIVE

DOCKET NO. [2017-292-WS](#) ORDER NO. 2018-121-H

AUGUST 30, 2018

David Butler
Standing Hearing Officer

DOCKET DESCRIPTION:

Application of Carolina Water Service, Incorporated for Approval of an Increase in Its Rates for Water and Sewer Services

MATTER UNDER CONSIDERATION:

Request for Protection for ORS witness Steven W. Hamm

STANDING HEARING OFFICER ACTION:

Counsel for the Office of Regulatory Staff (“ORS”) requests protection for its witness Steven W. Hamm in the present Docket. The rehearing on this matter is scheduled for Thursday, September 6, 2018. Mr. Hamm, an attorney, has been notified by a judge in Wilmington, North Carolina that a civil jury trial in which Mr. Hamm was participating and which had recessed, will resume on Wednesday, September 5, 2018. Mr. Hamm has stated a belief that the trial will not conclude until Friday, September 7, 2018. Accordingly, ORS requests protection for Mr. Hamm if he is unable to appear at the hearing scheduled before the Commission, and further requests that the Commission recess the hearing until Mr. Hamm concludes the jury trial in North Carolina and can appear before the Commission. ORS counsel further states that his client would not object if the Carolina Water Service (“CWS”) witness, Keith Babcock, who is also an attorney, does not testify until the continuation of the hearing after said recess.

Counsel for CWS objects to the request, and cites the wording of Order No. 2018-494, which directed “an aggressive schedule for rehearing.” CWS Counsel notes that the parties were aware of the schedule in the case when they retained experts and arranged for other witnesses to appear in the case. CWS suggests three alternatives: 1) a time certain for Mr. Hamm to testify on September 6 or 7; 2) testimony via Skype or another remote video link; or 3) stipulation of Mr. Hamm’s testimony into the record, with a reservation of the right to review surrebuttal submitted by Mr. Hamm before consent to this option.

ORS Counsel replied to the CWS objection and states that Mr. Hamm, as an officer of the Court, has no option but to appear in Superior Court in North Carolina on September 5, 2018, as directed by the trial judge. Further, ORS Counsel notes that it is impossible for ORS to provide a day/time certain when Mr. Hamm will be available to testify before the Commission, or when, or if Mr. Hamm would be made available by the trial judge to testify via Skype or remote link. Further, ORS states its opposition to stipulating the testimony into the record, as counsel believes that it is important for Mr. Hamm to be available to answer questions from Commissioners regarding his testimony. ORS counsel further points out South Carolina Appellate Court Rule 601 (a), which sets forth the priority between tribunals, along with the case of Spalt v. South Carolina Department of Motor Vehicles. Counsel's argument is that even though these refer to South Carolina attorneys, they provide guidance in the present situation. Counsel notes that there is no statutory time frame for order issuance in the current proceeding, nor will CWS be prejudiced, since it is currently charging rates approved by the original Order in this Docket. Further, ORS notes that it was unaware that Mr. Hamm's trial was not going to be concluded by the Commission hearing date.

ORS Counsel also cites what the Hearing Officer believes is a very practical reality: Mr. Hamm cannot be in two places at once. I do not believe that I have to reach the applicability of the appellate court rule or the case cited. The bottom line is that Mr. Hamm has been summoned as an Officer of the Court to appear as an attorney in a trial in North Carolina. He has no choice but to appear in North Carolina on the date of the hearing before this Commission. For this reason, he cannot appear at the Public Service Commission of South Carolina at the same time at the Commission hearing, whether he is to appear as an attorney or as a witness at the Commission. For this reason, the request for protection is granted, the CWS objection is overruled, and, in Mr. Hamm's absence on the date of the Commission hearing, all other witnesses will be presented as scheduled, however, the hearing will be recessed until further notice when all other witnesses have been presented. Another date will be established by the Commission for Mr. Hamm to testify. CWS witness Babcock may be presented along with the CWS case in chief, or on the day that Mr. Hamm is presented, at the option of Carolina Water Service. CWS must inform this Hearing Officer at a later date as to which option it has elected. This concludes the Standing Hearing Officer's Directive.